ISSUE DATE: August 8, 2000

PUC DOCKET NO. P-999/R-98-1081

STATEMENT OF NEED AND REASONABLENESS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott	Chair
Edward A. Garvey	Commissioner
Joel Jacobs	Commissioner
Marshall Johnson	Commissioner
LeRoy Koppendrayer	Commissioner

Planned Amendment to Rules Governing the Regulatory Treatment of Competitive Local Exchange Carriers (CLECs), Minnesota Rules, Chapters 7811 and 7812.

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I. INTRODUCTION AND STATEMENT OF STATUTORY AUTHORITY

Historically, Minnesota's public policy did not facilitate local telephone competition.[1] But in the mid-1990s, state and federal law changed to promote competition in the local telecommunications market. Laws 1995, chapter 156 (Minnesota Telecommunications Act of 1995); Pub. L. 104-104, 110 Stat. 56 (federal Telecommunications Act of 1996). Both pieces of legislation anticipate that incumbent local telephone companies, or local exchange carriers (hereinafter, LECs),[2] will compete with new competitive local exchange carriers (CLECs)[3] to provide local telecommunications services to consumers. In particular, the federal Act is designed to open the market for telecommunications services in three ways:

- by requiring LECs to permit CLECs to purchase their services wholesale and resell them to customers,

- by requiring LECs to permit CLECs to interconnect with their networks on competitive terms, and

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[1]Minn. Stat. § 237.16, subd. 2 (1994); see also In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Common Carrier Bureau (CC) Docket No. 96-98, FIRST REPORT AND ORDER, FCC 96-325, 11 F.C.C.R. 15,499 (rel. August 8, 1996) (Local Competition Order) ¶ 1:

> Historically, regulation of this industry has been premised on the belief that service could be provided at the lowest cost to the maximum number of consumers through a regulated monopoly network. State and federal regulators devoted their efforts over many decades to regulating the prices and practices of these monopolies and protecting them against competitive entry.

[2]Minn. Rules, parts 7811.0100, subp. 29; 7812.0100, subp. 29.

[3]Minn. Rules, parts 7811.0100, subp. 12; 7812.0100, subp. 12.

- by requiring LECs to unbundle the elements of their networks and make them available to CLECs on just, reasonable, and nondiscriminatory terms.

47 U.S.C. § 251(c). The Public Utilities Commission (the Commission) proposes to amend its rules to better account for these new CLECs.

The Commission proposes these rules pursuant to its general rulemaking authority in Minn. Stat. §§ 216A.05 and 237.10, and its specific rulemaking authority in § 237.16 which states:

> [T]he commission shall adopt rules applicable to all telephone companies and telecommunications carriers required to obtain or having obtained a certificate for provision of telephone service using any existing federal standards as minimum standards and incorporating any additional standards or requirements necessary to ensure the provision of high quality telephone services throughout the state. The rules must, at a minimum:
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> * * *
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> (6) prescribe appropriate regulatory standards for new local telephone service providers, that facilitate and support the development of competitive services;
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> (7) protect against cross-subsidization, unfair competition, and other practices harmful to promoting fair and reasonable competition;
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> * * *
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> (10) provide for the continued provision of local emergency telephone services under chapter 403; and
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> (11) protect residential and commercial customers from unauthorized changes in service providers in a competitively neutral manner.

Minn. Stat. § 237.16, subd. 8(a).

II. BACKGROUND AND STATEMENT OF NEED

Minnesota's Administrative Procedure Act, Minn. Stat. Chap. 14, directs an agency proposing rules to state the need for and reasonableness of the proposed rules. The Commission hereby states that the proposed rules are needed to refine the Commission's existing rules governing CLECs, especially those rules appearing at parts 7811.2200 and 7812.2200.

Minnesota Rules parts 7811.2200 and 7812.2200 resulted from the legislature's 1995 directive that the Commission adopt rules to facilitate telephone competition. The legislature directed the Commission to conduct one rulemaking regarding areas served by telephone companies with 50,000 or more subscribers, and another rulemaking regarding areas served by companies with fewer than 50,000 subscribers. Minn. Stat. § 237.16, subd. 8. The Commission did this, adopting Minnesota Rules chapters 7812 and 7811, respectively. But in the effort to complete the rulemakings by the prescribed dates, the Commission noted that certain issues would need to be developed further in a subsequent rulemaking. Among those issues was the regulation of CLECs.

Some CLECs were dissatisfied with the regulations adopted in Chapters 7811 and 7812. Among other things, Minnesota Rules part 7812.2200 subjects CLECs to largely the same regulation as incumbent LECs:

> Unless provided otherwise in this chapter, the local services provided by a competitive local exchange carrier (CLEC) are subject to Minnesota Statutes, chapter 237, and the commission's rules in the same manner as the local services provided by a local exchange carrier (LEC), except that the CLEC is not subject to Minnesota Statutes, section 237.22, and is not subject to rate-of-return regulation or earnings investigations under Minnesota Statutes, section 237.075 or 237.081....

The Commission took a conservative approach in drafting part 7812.2200, tracking the statutory scheme that governed CLECs prior to the rulemaking. Minn. Stat. §§ 237.035(e); 237.16, subd. 13. Yet many CLECs argued that this level of regulation was unwarranted. This language means, for example, that a CLEC's rate change is governed by § 237.63, subd. 4c.[4] A company governed under subdivision 4c must notify the Commission 60 days before increasing rates; while the Commission may waive this requirement, the Commission may also suspend the rate increase for up to 10 months. In contrast, US West Communications, Inc. (USWC) can raise certain rates with only 20 days notice, pursuant to its alternative form of regulation (AFOR) plan.[5] This incongruity prompted the Commission to grant a variance from the application of this rule in at least one instance.[6]

By the time Chapter 7811[7] was adopted, the Commission had acquired more experience with local telecommunications competition and recognized the propriety of regulating CLECs less stringently. Minnesota Rules part 7811.2200. But the adoption of these rules did not resolve all the CLEC's concerns. Many CLECs argued that being subject to different degrees of regulation in different parts of the state was administratively burdensome. For example, while 7811 permits CLECs to change rates more quickly, implementing the policy is difficult to reconcile with Chapter 7812. A CLEC that operates pursuant to both Chapters 7811 and 7812, and that intended to maintain uniform rates throughout the state, would need to govern its rate changes by the

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[4]In the Matter of a Request for Approval by MCIMetro Access Transmission Services, Inc. to Reduce the Recurring Charge for its Local Line Charges and Local Trunk - DID Charges, to Add Rates for Local Trunk Analog and Digital - Unlimited Option, to Increase the Digital Interface Rate for Local Trunks, and to Increase the Per Call Rate for its Local Measured Service Option, Docket No. P-5321/M-97-1150 ORDER (September 26, 1997).

[5]In the Matter of a Petition by U S WEST Communications, Inc. for Approval of an Alternative Regulation Plan, Docket No. P-421/AR-97-1544 (USWC AFOR Docket), Modified Alternative Form of Regulation Plan for the State of Minnesota (January 11, 1999).

[6]In the Matter of the Petition of MCImetro for Declaratory Ruling Concerning Interpretation of Minnesota Rule Part 7812.2200, Docket No. P-5321/M-98-1094 ORDER GRANTING VARIANCE OF MINNESOTA RULES, PART 7812.2200 (September 28, 1998).

[7]Minn. Rules Chap. 7811 governs areas served by companies with fewer than 50,000 subscribers.

slower of the two rate change provisions. This fact diminished the benefits of the more lenient treatment afforded by Chapter 7811. Additionally, some CLECs argued that part 7811.2200 was itself too burdensome.

Given these circumstances, the Commission concluded that it was necessary to initiate another rulemaking to address the concerns noted above.

III. STATEMENT OF REASONABLENESS

The Administrative Procedure Act also directs an agency proposing rules to establish that the proposed rules are a reasonable solution to the problem they are intended to address. Minn. Stat. § 14.23; Minn. Rules part 2010.0700. The Commission concludes that the proposed rules are a reasonable solution to the problems noted above. The Commission bases this conclusion on the merits of the policies underlying the proposed rules, and on the process by which the rules were developed.

A. Process

The Commission initiated the current docket by publishing its Request for Comments in this docket in the *State Register* on July 27, 1998.[8] 23 S.R. 272-73. As provided by Minnesota Statutes § 14.101, subdivision 2, the Commission sought advice from a committee representing all affected stakeholder groups. Participating organizations included both state "watchdog" agencies -- the Minnesota Department of Commerce (successor to the Minnesota Department of Public Service) and the Minnesota Office of Attorney General (OAG-RUD) – as well as AT&T Communications of the Midwest, Inc. (AT&T); the Cable Communications Association; FirstCom, Inc.; Global Crossing, Inc. (successor to Frontier Telephone); GTE Communications Corporation; Lakedale Communications; WorldCom, Inc. (successor to MCI WorldCom); McLeodUSA Telecommunications Services (successor to Dakota Telecom); MediaOne Telecommunications Corp. of MN (MediaOne); the Minnesota Independent Coalition (MIC); the Minnesota Senior Federation; Onvoy (successor to Minnesota Equal Access Network Services); Seren Innovations, Inc. (Seren); Sprint Communications Company (Sprint); and USWC.

[8]Previously, the Commission had initiated a rulemaking to address a number of topics, including CLEC regulation. In the Matter of the Planned Promulgation of Rules Governing the Competitive Provision of Local Telephone Service, including issues related to Universal Service, Regulatory Treatment of Competitive Local Exchange Carriers (CLECs), Service Quality, and Emergency Service (911), Docket No. P-999/R-97-609. When it became apparent that addressing the other matters in the docket would delay the CLEC rulemaking, the Commission initiated the current docket.

The advisory committee met on several occasions and exchanged comments and drafts. In particular, a sub-group of the committee submitted consensus language on behalf of AT&T; the Competitive Telecommunications Association; Crystal Communications, Inc. (Crystal); the Department; Echelon (successor to Advanced Telecommunications, Inc.); Global Crossing; McLeod; WorldCom; MediaOne; OAG-RUD; Seren; Sprint; and the Telecommunications Resellers Association.[9]

The Commission has considered the concerns of all commenting parties and believes that the proposed rules accommodate the competing concerns to the extent consistent with the public interest. The Commission incorporates most of the sub-group's language into its proposed rules because that language holds the greatest promise of promoting the fair, reasonable and vigorous competition this Commission has the duty to nurture. Further, the language has the support of CLECs, for whom the rules are being promulgated; the Department, which is charged with the duty to protect the public interest; and the OAG-RUD, which is charged with the duty to protect residential and small business consumers.

2. Policies

The proposed rules address the concerns that prompted this rulemaking. The rules are uniform, and appropriate to the task of regulating non-dominant carriers.

First, adopting the proposed rules would provide CLECs with uniform regulation throughout the state. This is critical for competition to thrive, since new entrants often cannot afford the kind of regulatory infrastructure required to comply with different regulatory requirements in different exchanges. This goal would be accomplished simply by replacing the disparate language in Chapters 7811 and 7812 with new language that would be identical in both chapters.

Second, adopting the proposed rules would provide an appropriate level of regulation for non-dominant carriers such as CLECs. Telecommunications regulation occurs on a spectrum. On one extreme, LECs provide a basic, essential service and have a dominant share of the local telephone market; as a consequence, they are subject to relatively thoroughgoing regulatory oversight. On the other extreme, long-distance companies face greater competition; as a consequence, they are subject to less scrutiny. CLECs occupy a middle position on this spectrum. Similar to LECs, they provide a basic, essential service; yet similar to long-distance companies, they generally lack market power. The Commission has weighed these factors in selecting rules that fulfill its mandate to "prescribe appropriate regulatory standards for new local telephone service providers, that facilitate and support the development of competitive services...." Minn. Stat. § 237.16, subd. 8(a)(6).

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[9]The sub-group draft represented a consensus among the sub-group members except that (1) AT&T, Seren, and MediaOne declined to support subpart 5, item D as drafted, (2) Crystal and Global Crossings had concerns related to subpart 7, (3) Sprint opposed subpart 1, item B as drafted, and (4) WorldCom only supported parts 7811.2210 and 7812.2210.

The draft rules provide an appropriate framework for CLEC competition in Minnesota, while preserving Commission oversight to protect consumers of basic phone service in a changing marketplace. The proposed rules place less emphasis on requiring prior Commission approval, and greater emphasis on complaint, as a means for governing CLEC conduct. This eliminates the delays and uncertainties associated with obtaining Commission approval, while preserving Commission authority to investigate problems and make changes where necessary. The proposed rules substantially limit Commission oversight of a CLEC's prices, while preserving the Commission's authority to address certain pricing practices that are particularly egregious or reflect the absence of a competitive market.

Beyond these general overarching policies, a more specific analysis of each rule is set forth below.

IV. ANALYSIS OF INDIVIDUAL RULES

Citations to "7811/12" mean that the same language changes would be incorporated into both Chapter 7811 and 7812. Underscoring represents new language.

7811.2200 Repealer
7812.2200 Repealer

The Commission would repeal the existing rule parts at 7811.2200 and 7812.2200 entirely. As noted above, this repeal is necessary because the two parts are inconsistent, and often impose inappropriately stringent regulations. Both facts frustrate the purposes for which the rules were adopted, to "prescribe appropriate regulatory standards for new local telephone service providers, that facilitate and support the development of competitive services." Minn. Stat. § 237.16, subd. 8(a)(6). The repeal is reasonable because those parts will be replaced with new, uniform, and appropriately-tailored provisions for regulating CLECs. The merits of the new proposed rules are addressed further below.

7811/12.0700, Subpart 5 -- Service to CLECs.

> A LEC providing wholesale services to a CLEC shall notify the CLEC at least two days before implementing a change in service providers to an end-user customer of the CLEC.

As noted above, the federal Act is designed to open the market for telecommunications services in various ways. In particular, it directs each LEC to permit CLECs to buy the LEC's services at wholesale rates, and to permit the CLEC to resell those services to customers. It also directs each LEC to permit CLECs to lease the use of the LEC's network's elements for the CLEC to combine to form retail services. In either case, the LEC acts as a wholesale provider to a CLEC, and the CLEC offers services to the end-user customer. The customer chooses a local service provider, but whatever the choice, the LEC must play a role in implementing the decision.

In particular, the LEC has the duty to implement a customer's choice to stop receiving a CLEC's services. But the CLEC does not always receive timely notice of this choice. Consequently, the CLEC may continue billing the customer, buying ancillary services on the customer's behalf, and asserting that the customer desires to receive the CLEC's service, which could amount to inadvertent "slamming." A rule is necessary to address this problem.

Requiring a two-day notice period would provide a reasonable resolution for the problem. The two-day notice period represents a balance between competing interests. As noted above, the CLEC losing the customer has an interest in receiving timely notice to avoid double-billing, ordering ancillary services on the customer's behalf, and slamming. The carrier gaining the customer has an interest in beginning service promptly, both to please the customer and to fend off the CLEC's attempts to win the customer back.

Of course, the proposed rule would not alter a LEC's discretion to provide earlier notice. An interconnection agreement that provided for earlier notice would remain unaffected.

7811/12.1900 -- Disputes arising under existing agreements.

> Disputes arising in the implementation of an agreement must be submitted to the commission for arbitration under part 7811/12.1700, unless:
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> A. the agreement provides a different mechanism for resolving those disputes; or
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> B. the dispute is filed under Minnesota Statutes, section 237.462, and the commission orders an expedited proceeding under subdivision 6 of that section.

Monopoly regulation differs from competitive market regulation. When governments mandate that each area of the state be served by only one telephone company, customers have little choice of providers, and providers have little incentive to engage in anti-competitive practices. If a customer's service is wrongfully terminated or inadequate, the Commission may need to respond promptly to have service restored. But in other complaints, the need for immediate resolution is less urgent. Wrongful conduct such as billing errors can be remedied with money, and damages can be determined by reference to tariffs. The issue of losing a customer rarely arises because only one company provides service in any given area.

In a competitive environment, in contrast, the issue of winning and losing customers is paramount. Company X's wrongful conduct may draw customers away from Company Y. And Company Y may see little prospect for adequate remedy, even if the wrongful conduct can be proven. First, throughout any complaint proceeding, Company X would enjoy the revenue stream from its ill-gotten customers while Company Y would not. Second, without being able to prove what choices a customer would have made in the absence of Company X's wrongful conduct, Company Y may not be able to establish damages. Finally, neither the Commission nor the courts may have the power to undo customer choices, even if wrongfully induced.

The Commission wrestled with this issue in the context of USWC's AFOR proceeding:

> The demands of the emergingly competitive local telephone market have impressed upon the Commission the need for prompt responses to competitively-sensitive issues. The traditional remedy is to launch an investigation that may culminate in a rate refund months or years later. This remedy has little relevance in quickly-developing markets. When a competitor complains of anticompetitive conduct, a Commission decision to launch a 6-month investigation may have the same effect as a decision dismissing the complaint outright.
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> * * *
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> Even when the Commission is able to retroactively punish anticompetitive conduct, that power may be insufficient to encourage fair and reasonable competition in the present. The Commission has little authority to undo a customer's choice, even if that choice was influenced by the vendor's wrongful conduct. Quite simply, the Commission cannot un-ring the bell. In this fluid landscape, often the Commission's only effective remedy is to suspend allegedly wrongful conduct while it is occurring.[10]

As noted above, where remedies may be inadequate, the next best alternative is to limit harm. Expeditious resolution of complaints limits a wrongdoer's ability to benefit from wrongful conduct. In 1999, the Minnesota legislature concluded that the Commission should have the authority to order an expedited proceeding for, among other things, complaints alleging a material violation of an interconnection agreement. As a result, the legislature adopted a new statute, *Laws of Minnesota 1999*, chapter 224, section 2, codified at Minn. Stat. § 237.462.

But, because the new statute was adopted after Chapters 7811 and 7812, it is not reflected in those rules. To the contrary, 7811/12.1900 currently suggests that disputes arising under an interconnection agreement may only be resolved through arbitration or some other mechanism specified within the agreement itself. The new proposed rule language is a reasonable means to correct this false impression, and to make the rules reflect the legal authority granted by § 237.462.

7811/12.2210, Subpart 1 -- General scope of regulation.

> Competitive local exchange carriers (CLECs) are regulated as provided in this part.
>
> A. The commission shall exercise its regulatory authority over the local services provided by CLECs only to the extent provided for in, or necessary to implement the requirements of, this chapter. Except as provided otherwise in this part or other commission rules, the commission shall exercise its authority over a CLEC's local services only upon complaint under subpart 17 and will not require prior approval of a CLEC's tariffs or service offerings.
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> B. This part applies to a CLEC affiliate of an incumbent local exchange

[10]USWC AFOR Docket, ORDER MODIFYING USWC'S ALTERNATIVE REGULATION PLAN (September 28, 1998), pp. 19-20.

carrier (LEC) only with respect to its operations in geographic areas outside the service area of the affiliated LEC. A CLEC's local service operations inside the service area of its affiliated LEC must be regulated in the same manner as the LEC's local service operations, unless specified otherwise in Minnesota Statutes, chapter 237.

This subpart has two provisions. Paragraph A would specify that the Commission would exercise its regulatory authority over CLECs only to the extent provided for in, or necessary to implement the requirements of, Chapter 7811 or 7812 as appropriate. It would further clarify that the Commission shall exercise this authority only upon complaint under subpart 17 (Investigations and Complaints) except as provided otherwise.

There are two reasons why it is reasonable for the Commission to regulate CLECs in this manner. First, less intrusive, more flexible regulatory oversight is warranted for non-dominant carriers such as CLECs. Greater scrutiny is warranted in a monopoly environment, because customers have few alternatives to submitting to the carrier's demands. But in a competitive environment, a customer generally has the option to switch to another carrier's service.[11] Second, while the Commission generally anticipates exercising its regulatory authority only upon complaint, the language would preserve the Commission's discretion to exercise the full measure of its regulatory authority to the extent provided for in, or necessary to implement the requirements of, Chapters 7811 and 7812.

Paragraph B would specify that this less intrusive, more flexible regulatory oversight applies to an affiliate of an LEC only with respect to its operations in geographic areas outside the service area of the affiliated LEC. The opportunity exists for a LEC to try to evade important requirements in Chapter 237 by forming a CLEC in its own certificated service area. This provision would give the Commission the opportunity to exercise greater regulatory oversight of a LEC-affiliated CLEC operating in the LEC's service area. The rules would provide that within the service area of the affiliated LEC, the CLEC affiliate would be regulated in the same manner as the LEC, to the extent allowed for by chapter 237. When a CLEC is operating within the service area of its LEC affiliate, the argument that the CLEC is a non-dominant carrier without market power is less valid. However, these proposed rules would not affect a LEC's ability to form a CLEC affiliate.

[11]The fact that a CLEC serves an area does not always mean that the people in that area will have a choice of providers. If a CLEC offered service in a part of the state that is currently unserved, the people would be faced with a choice of accepting the CLEC's service, or taking no service at all. However, this choice is still better than the status quo, where people have no option to receive local telecommunications services. In this rulemaking, the Commission has been mindful not to create any additional barriers to a CLEC offering the option of receiving local service to people in unserved areas.

7811/12.2210, Subpart 2 -- Tariff filings.

> For each local service offering, a CLEC shall file with the commission a tariff that contains the rules, rates, and classifications used by the CLEC in the conduct of its local service business, including limitations on liability. The tariff must be consistent with any terms and conditions in the CLEC's certificate of authority. The CLEC shall file six copies of its tariffs with the commission and shall serve one copy on the department and one copy on the Office of Attorney General - Residential Utilities Division (OAG-RUD). Amendments to the tariffs must be filed in the same manner. These filings are governed by the Minnesota Data Practices Act, Minnesota Statutes, chapter 13. Upon request, a CLEC shall provide a copy of its tariff or make its tariff available for review at a location convenient to the requesting person within five business days.

This subpart would direct CLECs to file tariffs with the Commission and to serve them on the Department and the OAG-RUD. It generally follows the filing requirements of Minn. Stat. §§ 237.07, subd. 1 and 237.74, subd. 1.

Tariffs are needed for various purposes. They provide centralized public access to information about a common carrier's rates and services. Also, they memorialize and verify the legal rate for each service a common carrier offers. This facilitates enforcement of prohibitions on discrimination, as set forth in proposed part 7811/12.2210, subp. 5.

The proposed rule would direct CLECs to file six copies of tariffs with the Commission. This language is necessary to displace the requirement that a CLEC file an original and fifteen copies of tariffs, as provided in Minn. Rules, part 7829.0400, subp. 2. This language is reasonable because the Commission generally does not require more than six copies of tariffs.

The proposed rule would also direct CLECs to file a copy of tariffs and amended tariffs with the Department and OAG-RUD. This language is reasonable because, like the Commission, these agencies have a duty to scrutinize telecommunications matters. To a large extent, this language merely codifies general practice. CLECs have had the obligation to serve tariffs on the Department pursuant to the Commission's current rules and Minn. Stat. § 237.07, subd. 1. And the OAG-RUD has the authority to place itself on a CLEC's general service list, thereby directing a CLEC to submit its tariff filings to the OAG-RUD. Minn. Rules part 7829.0600.

The proposed rule would state that the filings are governed by the Minnesota Data Practices Act. This provision is consistent with Minn. Stat. §§ 237.07, subd. 1 and 237.74, subd. 1. The rule is a reasonable means of informing a CLEC of the legal status of its filings.

Finally, the rule would direct a CLEC to make its tariffs available within five business days at a location convenient to anyone who requests it. Consistent with the legislature's preference for flexible regulations,[12] this rule is drafted to permit a CLEC a broad range of means to fulfill this

[12]Minn. Stat. §§ 14.002 and 14.131.

requirement. For example, a CLEC could post its tariffs on the internet, or provide them at an office, or mail them to a residence, depending on the needs of the requesting party. In this manner, the means can be tailored to the goal of providing timely notice.

7811/12.2210, Subpart 3 -- Tariff changes.

> A CLEC may offer new local services or change the prices, terms, or conditions of existing local services by filing amendments to its tariffs in accordance with subpart 2. These tariff filings take effect as follows:
>
> A. A new service, price decrease, promotion or insubstantial change in the terms or conditions of a service may take effect immediately upon filing. A price decrease may take effect without notice to customers.
>
> B. Except as provided in item C, a price increase, a substantial change in a term or condition of a service, or a discontinuation of a service other than basic local service may take effect 20 days after filing and providing written notice to affected customers as provided in subitems (1) and (2):
>
> (1) The written notice of a price increase must be given in simple and clear language by bill insert, bill notice or direct mail. To be simple and clear, the notice must bear the heading "NOTICE OF PRICE INCREASE."
>
> (2) The written notice of a substantial change in a term or condition of service or of the discontinuance of a service other than basic local service must be given in simple and clear language by bill insert, bill notice or direct mail. To be simple and clear, the notice must, at a minimum, bear a heading such as "NOTICE OF CHANGE IN TERMS" or "NOTICE OF DISCONTINUANCE," as appropriate.
>
> C. Notwithstanding items A and B, the filing requirements for a CLEC must not be more stringent than the filing requirements governing any LEC with 50,000 or more subscribers in whose service area the CLEC is providing local service.

Consistent with Minn. Stat. § 237.74, subd. 6, this subpart would permit a CLEC to offer new local services or change the prices, terms or conditions for existing local services by filing those changes with the Commission (in the manner described in subpart 2). The subpart would provide that tariff filings take effect as follows:

- New services, price decreases, promotions, or any insubstantial change in the terms or conditions of service would take effect upon filing. A price decrease could take effect without notice to customers.

- Price increases, substantial changes in terms or conditions of service or a discontinuation of a service other than basic local service would take effect 20 days after filing and the provision of written notice to affected customers. (The discontinuance of basic local service is governed by 7811/12.0600, subp. 6, and also by 7811/12.1400, subp. 14(C) for eligible telecommunications carriers.)

This subpart would also specify the type of customer notice that must be given for applicable tariff changes. For these changes, written notice would have to be given in simple and clear language by bill insert, bill notice or direct mail.

While this subpart would give CLECs flexibility in offering new services or changing their prices or terms of service, it would also protect consumers' interests by requiring varying types of notice for these changes. Because a price decrease cannot harm customers, no customer notice would be required. However, for changes that would have a significant impact on consumers, clear notice would have to be given before the change could take effect, thus allowing consumers the opportunity to make the decision of whether to continue receiving the CLEC's services.

Item C of this subpart would specify that, notwithstanding the rest of this subpart, a CLEC's filing requirements would never be more stringent than the filing requirements governing any LEC with greater than 50,000 access lines in whose service area the CLEC provides local service. This provision is necessary to ensure that a CLEC operating in the service area of a large LEC would not be placed in a worse regulatory position than the LEC with which it competes. This principle was one of the Commission's fundamental precepts in initiating this rulemaking.

7811/12.2210, Subpart 4 - Cost information.

> The commission shall not require a CLEC to file cost information unless the commission determines that cost information is needed to resolve a complaint alleging that the CLEC is violating a standard set forth in subpart 5 or 8.

As noted above, monopoly regulation differs from competitive market regulation. Monopoly rate-of-return regulation necessitates cost studies. See, for example, Minn. Stat. §§ 237.21; 237.59, subd. 2(b); 237.60, subd. 4; 237.626; 237.762; 237.770; and 237.772. Such studies aid the Commission in establishing fair and reasonable rates. They can indicate when one class of customers is subsidizing another. And they can identify potentially imprudent expenditures that the Commission should not allow the company to recover from ratepayers.

But, just as the legislature acknowledged that earnings and depreciation investigations are not necessary for the regulation of competitive companies,[13] so too the Commission concludes that cost studies are generally not necessary for the regulation of competitive companies. The Commission will generally not establish a CLEC's rates. And absent that traditional regulatory role, the Commission does not anticipate the need for cost studies. The first part of the proposed rule – establishing the cost studies are not generally required -- is necessary to counteract the presumption, based on decades of monopoly regulation, that such studies would be required.

[13]Minn. Stat. §§ 237.035; 237.16, subd. 13.

However, the Commission cannot rule out the possibility that it may require a CLEC to produce cost studies in some context. As a result, the proposed rule also reasonably preserves the Commission's discretion to direct a CLEC to produce cost information in the event that the CLEC's costs become relevant. Thus, the second part of the proposed rule – establishing that the Commission may direct a CLEC to produce a cost study under certain circumstances – is necessary to modify the first part of the rule.

The combined effect of the rule's first and second parts would establish a reasonable policy regarding cost studies, minimizing burdens while retaining flexibility, as favored by Minn. Stat. §§ 14.002 and 14.131.

7811/12.2210, Subpart 5 -- Discrimination.

> No CLEC may offer telecommunications service within the state on terms or rates that are unreasonably discriminatory. At a minimum, a CLEC must provide its telecommunications services in accordance with items A to D:
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> A. A CLEC shall charge uniform rates for local services within its service area. However, a CLEC may, upon a filing under subpart 2:
>
> (1) offer unique pricing to certain customers or to certain geographic locations for promotions as provided in subpart 6;
>
> (2) provide volume or term discounts;
>
> (3) offer prices unique to particular customers, or groups of customers, when differences in the cost of providing a service, market conditions, or LEC pricing practices, justify a different price;
>
> (4) offer different prices in different geographic areas when (a) differences in the cost of providing a service, or market conditions, justify a different price; (b) the areas are served by different LECs; (c) different prices are charged by the LEC serving the areas; or (d) an area is not served by an LEC;
>
> (5) pass through any legislatively authorized local taxes, franchise fees or special surcharges imposed by local or regional governmental units on the services provided by the CLEC in specific geographic areas from which the taxes, fees or surcharges originate; or
>
> (6) furnish service free or at a reduced rate to its officers, agents, or employees in furtherance of their employment.
>
> B. A tariff providing for prices unique to particular customers or groups of customers under item A, subitem (3), shall identify the service for which a unique price is available and the conditions under which the unique price is available.
>
> C. In addition to the exceptions provided in item A, a CLEC may also charge different rates for local services within its service territory upon a prior finding by the commission that the CLEC has good cause to do so.
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> D. To the extent prohibited by federal law or the commission, a CLEC shall not give preference or discriminate in providing services, products, or facilities to an affiliate or to its own or an affiliate's retail department that sells to consumers.

This proposed rule would bar a CLEC from charging unreasonably discriminatory rates for telecommunications services offered within the state. This subpart is necessary to promote the

state policy against discrimination that appears at Minn. Stat. §§ 237.09, subd. 1; 237.121; 237.60, subd. 3; 237.74, subd. 2 and 3; and 237.771. The "unreasonably discriminatory" standard is reasonable in that it derives from Minn. Stat. §§ 237.60, subd. 3 and 237.74, subd. 2. Moreover, the rule would preserve the Commission's authority under Minn. Stat. § 237.09 to prohibit carriers from giving discriminatory preference to their own affiliates in the provision of local telephone service.

At the same time, this proposed subpart would recognize that the development of a competitive market may appropriately result in pricing differences within a CLEC's service area. For example, a CLEC may operate in the service area of more than one LEC. Thus, the rules allow the CLEC flexibility to establish prices designed to compete with more that one LEC at the same time. To recognize such instances, item A of this subpart would set forth exceptions to the general assumption of uniform prices. The exceptions are consistent with Minn. Stat. §§ 237.14 and 237.74, which allow telecommunications providers to charge non-uniform rates under certain circumstances. Indeed, in the context of alternative forms of regulation (AFOR) plans, the legislature noted the propriety of defining circumstances under which uniform rates would not be required. Minn. Stat. § 237.771. This subpart would codify a list of such circumstances.

The subpart would allow a CLEC to charge different rates under these exceptions without prior Commission approval. But other valid reasons for rate differences may arise. For those other instances, item C would allow a CLEC to petition the Commission and demonstrate that it has good cause for charging different rates. The "good cause" standard is reasonable in that it derives from Minn. Stat. §§ 237.60, subd. 3; 237.74, subd. 2; and 237.771.

7811/12.2210, Subpart 6 - Promotions.

> A CLEC may promote the use of a local service by offering a waiver of part or all of the recurring or non-recurring charge, a redemption coupon, or a premium with the purchase of a service. The promotion may be aimed at certain customers or to certain geographic locations. The customer group to which the promotion is available must be based on reasonable and nondiscriminatory distinctions among customers. Any single promotion in a given area must not be effective for longer than 90 days at a time. A promotion may take effect upon a tariff filing in accordance with subpart 2. The promotional tariff should include the dates of the promotion, prices, and a brief description of who is eligible for the promotion and the benefits, restrictions, and commitments of the promotion.

This provision would allow a CLEC to offer promotions under time frames consistent with Minn. Stat. § 237.626, without being subject to that statute's requirement to file costs studies. The rationale for not requiring cost studies is addressed in the discussion of 7811/12.2210, subp. 4. This proposed rule would add no new burdens to CLECs; it would merely continue the policy that applies today pursuant to Minn. Rules part 7811/12.2200 and Minn. Stat. § 237.626.

7811/12.2210, Subpart 7 - Packaging services.

> A CLEC may offer local service as part of a package that may include goods and services other than telecommunications services. In addition to the tariff requirements that apply to the telecommunications elements of the package, the tariff must also contain a general description of the nontelecommunications components of the package. Nothing in this subpart is intended to give the commission or the department regulatory authority over the nontelecommunications services provided by a CLEC.

This subpart would allows a CLEC to package regulated telecommunications services with non-regulated services, and would clarify the filing requirements for such bundled offerings. It would require a CLEC to file in its tariffs a description of the non-regulated service components of a package that also contains a regulated service component. The intent of this provision is to allow CLECs to package such services together to meet customers' needs, while providing regulators with some general knowledge and information concerning the components of those offerings. This is a reasonable provision, in that it would assist regulators in responding to consumer complaints or inquiries regarding the packaged service offering, and assist in discrimination complaints.

7811/12.2210, Subpart 8 - Prices.

> A CLEC's local services are not subject to any rate or price regulation except that the commission may, upon complaint, order a CLEC to change a price or pricing practice or take other appropriate action if the commission determines, after an investigation under subpart 17, that:
>
> A. the price or pricing practice unreasonably restricts resale in violation of Minnesota Statutes, section 237.121, paragraph (a), clause (5);
>
> B. the price or pricing practice is unreasonably discriminatory in violation of subpart 5;
>
> C. the price or pricing practice is deceptive, misleading, fraudulent as those terms are defined in state or federal law, or is otherwise unlawful under state or federal law;
>
> D. the price or pricing practice will impede the development of fair and reasonable competition or reflects the absence of an effectively competitive market as determined on the basis of factors such as:
>
> (1) the timely availability of comparable substitutes from other local service providers;
>
> (2) the availability of facilities-based competitors; and
>
> (3) evidence of rivalrous price competition, as demonstrated by the existence of multiple competitors competing on price for the same or similar services; or
>
> E. the price or pricing practice has caused or will result in substantial customer harm.

This proposed rule is necessary to fulfill the Commission's mandate to adopt rules to "protect against cross-subsidization, unfair competition, and other practices harmful to promoting fair and reasonable competition...." Minn. Stat. § 237.16, subd. 8(a)(7). It would establish that a CLEC has discretion to set its own local rate levels, consistent with the established standards. If someone were to complain that the CLEC's price or practices violates the standards, however, the Commission would retain the authority to order remedial measures. Specifically, the Commission could act if a CLEC's price or pricing practice were found to –

- restrict unreasonably the resale of services in violation of Minn. Stat. § 237.121;
- be unreasonably discriminatory, in violation of subpart 5;
- be deceptive, misleading or fraudulent as those terms are defined in state or federal law;
- impede the development of fair and reasonable competition, or reflect the absence of an effectively competitive market; or
- cause or result in substantial customer harm.

These five standards are consistent with policy underlying Minn. Stat. § 237.06, which requires a telephone company's rates and practices to be "fair and reasonable." Because CLECs are non-dominant carriers, the public interest does not require the Commission to regulate their prices in the same manner as the Commission regulates LEC prices. At the same time, the proposed rule would retain Commission jurisdiction over CLECs' practices to ensure that consumers have at least one forum in which to address the behavior identified in this rule.

In particular, the criteria set forth at subpart (D) for evaluating effectively competitive markets are reasonable, in that they are comparable to the criteria established by the legislature at Minn. Stat. § 237.59, subd. 5(a).

7811/12.2210, Subpart 9 - Prohibited practices.

> A CLEC must comply with Minnesota Statutes, section 237.121, which proscribes certain conduct in the provision of telecommunications services.

The Minnesota legislature recognized that the advent of telecommunications competition prompted the need for more specific prohibitions on anti-competitive conduct, especially inter-company conduct. As a result, the legislature adopted Minn. Stat. § 237.121 ("Prohibited practices") as part of the Minnesota Telecommunications Act of 1995. *Minnesota Laws 1995*, chapter 156, § 4 (as modified). The proposed rule would be a reasonable way to note that CLECs are subject to the terms of this statute as well. In addition, the proposed rule is necessary to fulfill the Commission's mandate to adopt rules to "protect against cross-subsidization, unfair competition, and other practices harmful to promoting fair and reasonable competition...." Minn. Stat. § 237.16, subd. 8(a)(7).

This proposed rule would be consistent with Minn. Stat. §§ 237.035(b) and 237.462, subd. 1; § 237.462 is also integrated into the proposed rules at parts 7811/12.1900(B); 7811/12.2210, subp. 17(B); and 7811/12.2210, subp. 18. It would add no new burdens to CLECs; it would merely continue the policy that applies today pursuant to Minn. Rules part 7811/12.2200 and Minn. Stat. § 237.121.

7811/12.2210, Subpart 10 - Interconnection.

> A CLEC must allow physical connections to its network and pay appropriate compensation for interconnection with and access to the networks of other local service providers as determined by the commission consistent with the requirements of the federal act.

Interconnection is necessary to permit customers of competing local service providers to call each other. In the absence of mandated interconnection, an incumbent telephone company could squelch competition simply by refusing to complete calls to or from a CLEC's customers.[14] The proposed rule provide a reasonable means to state that the duty to interconnect applies to CLECs too. Also, the proposed rule provides a logical counterpoint to the next proposed rule, Minn. Rules 7811/12.2210, subp. 11, which deals with disconnection.

This proposed rule would add no new burdens to CLECs. It would merely continue the policy that applies today pursuant to Minn. Rules part 7811/12.2200, Minn. Stat. §§ 237.12 and 237.16, and the federal Telecommunications Act of 1996. The federal Act states –

> Each telecommunications carrier has the duty ... to interconnection directly or indirectly with the facilities and equipment of other telecommunications carriers....

47 U.S.C. § 251(a). In addition, the federal Act sets forth the circumstances under which the Commission may prescribe the terms of that interconnection. 47 U.S.C. § 252.

7811/12.2210, Subpart 11 -- Commission approval to discontinue service or physical connection to another carrier.

> In accordance with Minnesota Statutes, sections 237.74, subdivisions 6, paragraph (a), and 9, a CLEC must obtain prior commission approval before discontinuing a service or physical connection to a telephone company or a telecommunications carrier if end-users would be deprived of service because of the discontinuance or disconnection.

As noted above, where after-the-fact remedies may be inadequate to remedy problems that arise from a CLEC's conduct, the Commission directs a CLEC to obtain prior Commission approval for its conduct. But where after-the-fact remedies are adequate, the Commission will rely on the complaint process to police a CLEC's actions.

This proposed rule would require Commission approval before a CLEC could sever a connection to another carrier if doing so would disrupt service to customers. This language is designed to protect consumers whose service depends substantially on the seamless, uninterrupted interconnection of multiple networks. This policy is necessary because after-the-fact remedies may not be fully adequate to compensate an end-user that is, for example, deprived of 911 service

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[14]Local Competition Order, ¶ 10.

during an emergency. This proposed rule would add no new burdens to CLECs because it would merely continue the policy that applies today pursuant to Minn. Rules part 7811/12.2200 and Minn. Stat. § 237.12, subd. 2; the language is, of course, also consistent with 237.74, subd. 6(a) and 9.

7811/12.2210, Subpart 12 - Public right-of-way.

> To the extent that a CLEC owns or controls, or seeks to own or control, a facility in the public right-of-way, that is used or is intended to be used for transporting telecommunications or other voice or data information, the CLEC shall comply with the provisions of Minnesota Statutes, sections 237.162 and 237.163, which provide for the use and regulation of the public rights-of-way.

For telecommunications providers to compete fairly, they need equal and predictable access to public rights-of-way. The Minnesota legislature recognized this fact when it adopted Minn. Stat. §§ 237.162 ("Public right-of-way; definitions.") and 237.163 ("Use and regulation of public right-of-way"). The proposed rule would be a reasonable means to note that the terms of these statutes apply to CLECs. The language derives from Minn. Stat. § 237.162, subd. 4, which states:

> "Telecommunications right-of-way user" means a person owning or controlling a facility in the public right-of-way, or seeking to own or control a facility in the public right-of-way, that is used or is intended to be used for transporting telecommunications or other voice or data information.

This rule would add no new burdens to CLECs because it would merely continue the policy that applies today pursuant to Minn. Rules part 7811/12.2200 and Minn. Stat. §§ 237.16, subd. 1(a), 237.162 and 237.163; the language is also consistent with Minn. Stat. § 237.74, subd. 5.

7811/12.2210, Subpart 13 - 911/TACIP/TAP.

> Each CLEC is subject to Minnesota Statutes, sections 237.52 (Telecommunications Access for Communications-Impaired Persons), 237.70 and 237.701 (Telephone Assistance Program), and 403.11 (911 Emergency Services). Amounts collected as surcharges under these sections must be remitted to the Department of Administration in the manner prescribed in Minnesota Statutes, section 403.11.

The Telecommunications Access for Communications-Impaired Persons (TACIP) program finances a service for relaying telecommunications messages between people with impaired hearing, speech or mobility who would otherwise have difficulty using a telephone. The Telephone Assistance Plan (TAP) subsidizes local telephone service for certain low-income Minnesota households. 911 Emergency Services provide prompt communications with emergency response teams.

The legislature has determined that each of these programs is needed, and has determined that they should be financed through assessments on telecommunications firms. The proposed rule would provide a reasonable means to notify CLECs of their obligations to comply with these programs,

especially regarding the need to remit the revenues to finance these programs. In addition, the proposed rule is necessary to fulfill the Commission's mandate to adopt rules to "provide for the continued provision of local emergency telephone services under chapter 403...." Minn. Stat. § 237.16, subd. 8(a)(10). This rule would add no new burdens to CLECs because it would merely continue the policy that applies today pursuant to Minn. Rules part 7811/12.2200 and Minn. Stat. §§ 403.11, 237.49, 237.52, 237.70 and 237.701.

7811/12.2210, Subpart 14 - Consumer protection laws on disclosure, antislamming, cramming.

> A CLEC shall comply with the requirements of Minnesota Statutes, sections 237.66, 237.661, and 237.663.

Minnesota Statues §§ 237.66, 237.661 and 237.663 provide consumer protections. Generally –

- Section 237.66 mandates that residential end-users receive annual notice of all available service options, including the option to block the use of 900 (pay-per-call) phone numbers and international long distance numbers, and the option to "freeze" the end-user's choice of long-distance service provider.
- Section 237.661 penalizes "slamming" – that is, changing an end-user's choice of long-distance service provider without the end-user's authorization – and states what steps must be taken to verify that authorization.
- Section 237.663 prohibits "cramming" or "loading" – that is, charging an end-user for a service not mandated by the Commission and not authorized by the end-user.

The legislature has determined that these types of consumer protections are necessary for consumers to reap the benefits of competition; customer choice is meaningless if those choices are not respected by the companies themselves. The proposed rule would be reasonable in that it merely states that the legislatively-approved terms of §§ 237.66, 237.661 and 237.663 apply to CLECs. In addition, the proposed rule is necessary to fulfill the Commission's mandate to adopt rules to "protect residential and commercial customers from unauthorized changes in service providers in a competitively neutral manner...." Minn. Stat. § 237.16, subd. 8(a)(11). This rule would add no new burdens to CLECs because it would merely continue the policy that applies today pursuant to Minn. Rules part 7811/12.2200 and Minn. Stat. §§ 237.66, 237.661 and 237.663.

7811/12.2210, Subpart 15 - Regulatory expense assessment.

> A CLEC is subject to assessment by the department for the regulatory expenses of the department and the commission, as provided by Minnesota Statutes, section 237.295.

Consistent with Minn. Stat. § 237.74, subd. 10, this subpart would specify that a CLEC is subject to assessments for the Commission's and the Department's regulatory expenses. This policy is needed to finance those agencies. This rule is reasonable in that it ensures that CLECs will bear their fair share of the cost of financing telecommunications oversight in Minnesota. This rule would add no new burdens to CLECs because it would merely continue the policy that applies today pursuant to Minn. Rules part 7811/12.2200 and Minn. Stat. § 237.295.

7811/12.2210, Subpart 16 - Mergers and acquisitions.

> In accordance with Minnesota Statutes, section 237.74, subdivision 12, before acquiring ownership or control of any provider of local service in Minnesota, either directly or indirectly, a CLEC must demonstrate to the commission that the merger is consistent with the public interest, based on such factors as the potential impact of the merger on consumers, competition, rates, and service quality.

Statute grants the Commission discretion in evaluating proposed mergers. Minn. Stat. §§ 237.23, 237.74, subd. 12. The proposed rule is needed to provide guidance on how the Commission will exercise its discretion. This rationale is part of the Commission's effort to create a pro-competitive environment, in fulfillment of its mandate to "prescribe appropriate regulatory standards for new local telephone service providers, that facilitate and support the development of competitive services...." Minn. Stat. § 237.16, subd. 8(a)(6).

This subpart would make CLECs subject to the merger standards the Commission has used previously,[15] requiring that a CLEC demonstrate to the Commission that the merger is consistent with the public interest, based on such factors as the potential impact of the merger on consumers, competition, rates and service quality. The proposed rule would provide a reasonable means to communicate the Commission's standards for evaluating telecommunications mergers.

7811/12.2210, Subpart 17 - Investigations and complaints; proceedings.

> Investigation and complaints regarding CLEC compliance with this chapter are governed by items A to H.
>
> A. After giving notice to the CLEC, the commission may investigate any matter brought forth under its own motion or raised in a complaint against a CLEC of any possible violations of this chapter. A complaint may be brought by a telephone company; by a telecommunications carrier; by the department; by the OAG-RUD; by the governing body of a political subdivision; or by no fewer than five percent or 100, whichever is the lesser number, of the subscribers or spouses of subscribers of the CLEC.

[15]See, for example, In the Matter of MCI Telecommunications Corporation and WorldCom, Inc., Merger, Docket No. P-443,3012/PA-97-1532 ORDER APPROVING MERGER (April 9, 1998).

B. If, after an investigation, the commission finds that a significant factual issue has not been resolved to its satisfaction, the commission may order that a contested case hearing be conducted under Minnesota Statutes, chapter 14, unless the complainant, the CLEC, and the commission agree that an expedited hearing under Minnesota Statutes, section 237.61 is appropriate, or the commission orders an expedited proceeding under Minnesota Statutes, section 237.462, subdivision 6.

C. In any complaint proceeding authorized under this subpart, the CLEC bears the burden of proof, unless:

(1) the complaint alleges the CLEC's prices fail to satisfy the price uniformity requirements of subpart 5, item A, in which case the burden is on the complainant to prove that the price differences are not justified; or

(2) the commission determines that the burden should be placed on the complainant based on factors such as which party has control of critical information regarding the issue in dispute.

D. A full and complete record must be kept by the commission of all proceedings before it upon any formal investigation or hearing. All testimony received or offered must be taken down by a stenographer appointed by the commission and a transcribed copy of the record furnished to any party to the investigation upon paying the expense of furnishing the transcribed copy.

E. If the commission finds by a preponderance of the evidence presented during the complaint proceeding that existing rates, tariffs, charges, schedules or practices violate an applicable provision of this chapter, the commission shall take appropriate action, which may include ordering the CLEC to:

(1) change the rate, tariff, charge, schedule or practice;

(2) make the service reasonable, adequate or obtainable; or

(3) take other appropriate action.

F. A copy of an order issued under this subpart must be served upon the person against whom it is directed or the person's attorney, and notice of the order must be given to the other parties to the proceedings or their attorneys.

G. A party to a proceeding before the commission or the OAG-RUD may make and perfect an appeal from the order in accordance with Minnesota Statutes, chapter 14.

H. This subpart does not preclude the parties from pursuing voluntary mediation, arbitration or other alternative dispute resolution. Upon the filing of a complaint, the commission may vary deadlines to allow for voluntary dispute resolution by the parties. However, in accordance with part 7829.1600, if the complainant desires formal action by the commission, the commission shall resolve the dispute.

In order for the proposed rules to have effect, it is necessary that they have an enforcement mechanism. This proposed rule would set forth a mechanism for enforcing the provisions of Minn. Rules Chapters 7811/12 regarding CLECs.

Item A would state how complaints may be initiated. This proposed rule is reasonable in that it largely reflects the legislatively-approved language of §§ 237.081, subd. 1a and 237.74, subd. 4(b).

Item B would state the options for resolving factual disputes. This proposed rule is reasonable

in that it largely reflects the legislatively-approved language of §§ 237.081, subd. 2 and 237.74, subd. 4(c). Unlike those statutes, however, item B notes that the legislature has also granted the Commission the authority to address factual disputes pursuant to Minn. Stat. § 237.462, subd. 6.

Item C would allocate the burden of proof. This proposed rule is reasonable in that it largely reflects the legislatively-approved language of §§ 237.28 and 237.74, subd. 4(d). Unlike these statutes, however, this rule adds that in a complaint alleging price discrimination, the complainant bears the burden of proof. It is reasonable to place the burden of proof on the complainant to ensure that such complaints are bona fide, and to discourage competitors from exploiting the complaint process for anti-competitive purposes.

Item D would require the maintenance of records. This proposed rule is reasonable in that it largely reflects the legislatively-approved language of Minn. Stat. §§ 237.24 and 237.74, subd. 4(e).

Item E would direct the Commission to redress circumstance in which a preponderance of the evidence demonstrates that a CLEC's existing rates or practices violate Minn. Rules Chap. 7811/12. This proposed rule is reasonable in that it largely reflects the legislatively-approved language of Minn. Stat. § 237.74, subd. 4(e). The proposed rule provides for a broader range of remedies than does the statute, reflecting the "basic necessity" status of local telecommunications service, and the nascent state of the local telecommunications market.

Item F would state whom the Commission should notify when issuing an order resolving a complaint. This proposed rule is reasonable in that it largely reflects the legislatively-approved language of Minn. Stat. §§ 237.081, subd. 5 and 237.74, subd. 4(f).

Item G would provide for appeal of a Commission order resolving a complaint. This proposed rule is reasonable in that it largely reflects the legislatively-approved language of Minn. Stat. §§ 237.25 and 237.74, subd. 4(g).

Item H would provide for resolving a complaint through a voluntary settlement negotiated among parties, and would permit the Commission to vary deadlines to facilitate such settlements. This language is a reasonable means to promote the state policy favoring voluntary dispute resolution. Minn. Stat. § 237.076. This approach is also consistent with the legislature's preference for flexible regulation. Minn. Stat. §§ 14.002, 14.131. But the rule would also provide that a complainant may insist on proceeding with a formal complaint. That language is necessary to assure a complainant that the settlement process cannot be used to delay resolution of the complaint indefinitely.

7811/12.2210, Subpart 18 - Enforcement; penalties and remedies.

> A CLEC is subject to the penalties and remedies provided in Minnesota Statutes, sections 237.461, 237.462 and 237.74, subdivision 11.

In a competitive environment, as noted in the discussion of proposed rule 7811/12.1900, competition for customers may be fierce and the temptation to resort to anti-competitive practices may be great. Where after-the-fact remedies may be inadequate to remedy problems that arise from a CLEC's conduct, the Commission directs a CLEC to obtain prior Commission approval for its conduct. But where after-the-fact remedies are adequate, the Commission prefers to rely on the complaint process to police a CLEC's actions. This approach is consistent with the legislature's preference for flexible regulation. Minn. Stat. §§ 14.002 and 14.131.

This proposed rule would provide the remedies necessary to make the complaint process effective. The language would reasonably state that CLECs are subject to the penalty provisions approved by the legislature.

7811/12.2210, Subpart 19 - Annual reports.

> On or before May 1 of each year, a CLEC shall complete and return to the department the annual report form prepared by the department.

Regulators need information from telecommunications companies operating within the state for various reasons. For instance, they need to know each carrier's jurisdictional operating revenues because these agencies recover their costs from the telecommunications companies in proportion to the companies' revenues. Minn. Stat. § 237.295.

The proposed rule is a reasonable way to acquire this information. This rule would add no new burdens to CLECs, because it would merely continue the policy that applies today pursuant to Minn. Rules part 7811/12.2200 and Minn. Stat. § 237.11.

I. REGULATORY ANALYSIS

The legislature directs an agency proposing rules to address certain matters in its SONAR. Minn. Stat. § 14.131. These matters, and the Commission's responses, are set forth below:

(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The following classes of persons would probably be affected:

- People receiving local telecommunications services.
- People who would like to receive such services, or better services.
- People that provide telecommunications services.
- People that would like to provide such services.
- Government agencies supervising such services.

The following classes of persons would probably bear the cost of the proposed rules:

- People receiving local telecommunications services.
- People who would like to receive such services, or better services.
- People that provide telecommunications services.
- People that would like to provide such services.
- Government agencies supervising such services.

The following classes of persons would probably benefit from the proposed rules:

- People receiving local telecommunications services.
- People who would like to receive such services, or better services.
- People that provide telecommunications services.
- People that would like to provide such services.

(2) the probable cost to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues

The Commission recognizes that these rules would likely impose some costs on government agencies, including itself; however, the agencies themselves are in the best position to quantify these costs. The Commission asked state agencies to estimate the cost of implementing and enforcing rules substantially similar to the proposed rules.[16] The Department of Commerce estimated that the cost of implementing and enforcing the proposed rules would be no greater than the cost of implementing and enforcing the current rules. The Commission concurs in the Department's opinion.

An appendix to the June 16, 1999, edition of the *Minnesota Rulemaking Manual* (David Orren, editor/compiler) estimates the one-time cost to promulgate a "Major Rule" at $166,035.[17]

The Commission does not anticipate that these rules would have any appreciable effect on state revenues.

(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule

The Commission knows of no less costly or less intrusive methods for achieving the same benefits as the proposed rules.

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[16]At the time the Commission asked the Department and the OAG-RUD to estimate the cost to implement and enforce the rule language, the language had not yet been conformed to rulemaking format by the Office of the Revisor of Statutes.

[17]The manual may be found on the World Wide Web at

http://www.health.state.mn.us/divs/hpsc/dap/rmanform.htm

The cost estimate appears in file COST-INF.EXE.

(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule

Rulemaking is the only legitimate way to achieve the twin goals of providing more uniform and less burdensome rules governing CLECs. Prior to the adoption of Minn. Rules Chap. 7811 and 7812, CLECs were subject to the thoroughgoing regulation of incumbent LECs. Minn. Stat. §§ 237.035(e) and 237.16, subd. 13. The Commission found this degree of regulation incompatible with its obligation to "proscribe appropriate regulatory standards for new local telephone service provides, that facilitate and support the development of competitive services." Minn. Stat. § 237.16, subd. 8(a)(6). Following the adoption of Chap. 7811 and 7812, CLECs were subject to regulation that was still unduly burdensome, and also inconsistent. The Commission cannot alter problems resulting from rulemaking except by rulemaking.

(5) the probable costs of complying with the proposed rule

The Commission estimates that the cost of complying with the proposed rules would be comparable to or less than the cost of complying with the existing rules. Put another way, the incremental cost of complying with the Commission's rules would be negligible or negative. The proposed rules net effect would be to reduce regulatory burdens on CLECs. In support of this conclusion, the Commission notes that rules will have their greatest effect on CLECs, and that no CLEC spoke in opposition to the Commission proposing the draft rules.

(6) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference

No advisory committee member brought to the Commission's attention any conflicts between the proposed rules and federal law. Thus, in the absence of federal regulation on this matter, the Commission concludes that none of the proposed rules would conflict with existing federal regulation, and conversely that all of them would differ from existing federal regulation. The need for and reasonableness of the proposed rules are set forth above.

II. PERFORMANCE-BASED REGULATION

The legislature directs an agency proposing rules to state in the SONAR how the agency, in developing the rules, considered and implemented the legislative policy supporting performance-based regulatory schemes set forth at Minn. Stat. § 14.002. Minn. Stat. § 14.131. Section 14.002 states:

> The legislature recognizes the important and sensitive role for administrative rules in implementing policies and programs created by the legislature. However, the legislature finds that some regulatory rules and programs have become overly prescriptive and inflexible, thereby increasing costs to the state, local governments, and the regulated community and decreasing the effectiveness of the regulatory program. Therefore, whenever feasible, state agencies must develop rules and regulatory programs that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.

The proposed rules, by placing greater emphasis on the complaint process rather than on prior Commission scrutiny of CLEC conduct, would maximize flexibility and minimize costs for all concerned.

III. ADDITIONAL NOTIFICATION

The Commission plans to publish the proposed rules in the *State Register*, and to mail a copy of the proposed rules and the accompanying notice to the list of all persons who have registered with the agency for the purpose of receiving notice of rule proceedings pursuant to Minn. Stat. § 14.14, subd. 1a. The Commission also plans to publicize the rulemaking in a press release, in its *Weekly Calendar*, and on its internet World Wide Web site at --

http://www.state.mn.us/ebranch/puc/

In addition, the Commission plans to mail the proposed rules and notice to --

- all persons who asked to receive notice of only telephone-related matters,
- all persons who asked to receive notice of matters in this specific rulemaking,
- all members of the Commission's advisory committee for this rulemaking,
- all local exchange carriers certified in Minnesota,
- all competitive local exchange carriers certified in Minnesota, and
- all interexchange carriers certified in Minnesota.

These lists were updated throughout the proceeding.

IV. WITNESSES SUPPORTING PROPOSED RULES

If the Office of Administrative Hearings were to convene a public hearing on these proposed rules, the Commission anticipates having Commission staff members Marc Fournier and Eric Witte testify in support of the need for and reasonableness of the proposed rules. The Commission may have other witnesses testify as well.

V. CONCLUSION

For the foregoing reasons, the Commission concludes that the proposed rules are needed and reasonable. The Commission offers this document in fulfillment of its obligations pursuant to Minn. Stat. §§ 237.131 and 237.23, and Minn. Rules part 1400.2070.

Burl W. Haar

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), (651) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).

Public Utilities Commission

DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing If 25 or More Requests for Hearing are Received

Planned Amendment to Rules Governing the Regulatory Treatment of Competitive Local Exchange Carriers (CLECs), *Minnesota Rules*, Chapters 7811 and 7812, Public Utilities Commission Docket No. P-999/R-98-1081

Introduction. The Public Utilities Commission intends to adopt rules without a public hearing following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28, and rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310. But if 25 or more persons submit a written request for a hearing on the rules within 30 days or by 4:30 p.m. on September 20, 2000, a public hearing will be held at the Public Utilities Commission small hearing room, 121 Seventh Place East, Suite 350, St. Paul, Minnesota, starting at 9:30 a.m. on October 5, 2000. To find out whether the rules will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after September 20, 2000 and before October 5, 2000.

Agency Contact Person. Comments or questions on the rules and written requests for a public hearing on the rules must be submitted to Eric Witte, Commission Attorney, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, ST. PAUL MN 55101-2147, 651-96-7814 (voice), 651-297-7073 (fax), 651-297-1200 (TTY), *eric@puc.state.mn.us*.

Subject of Rules and Statutory Authority. The proposed rules pertain to the regulation of competitive local exchange carriers (CLECs), including the relationship between CLECs and incumbent local exchange carriers (LECs). The statutory authority to adopt the rules is *Minnesota Statues*, sections 216A.05, 237.10 and 237.16. A copy of the proposed rules is published in the *State Register*.

Comments. You have until 4:30 p.m. on September 20, 2000, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and be received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change desired. Any comments that you would like to make on the legality of the proposed rules must also be made during this comment period. Please include a reference to **Public Utilities Commission Docket No. P-999/R-98-1081** at the beginning of your comments.

Request for a Hearing. In addition to submitting comments, you may also request that a hearing be held on the proposed rules. Your request for a public hearing must be in writing and must be received by the agency contact person by 4:30 p.m. on September 20, 2000. Your written request for a public hearing must include your name and address. You must identify the portion of the proposed rules to which you object or state that you oppose all of the proposed rules. Any request that does not comply with these requirements is not valid and cannot be counted by the agency for determining whether a public hearing must be held. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules. Again, please include a reference to **Public Utilities Commission Docket No. P-999/R-98-1081** at the beginning of your request.

Withdrawal of Requests. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

Accommodation. Upon request, this Notice can be made available in an alternative format, such as large print, Braille, or Cassette tape. To make such a request, or if you need an accommodation to make this hearing accessible, please contact the agency contact person listed above.

Modifications. The proposed rules may be modified, either as a result of public comment or as a result of the rule hearing process. Modifications must be supported by data and views submitted to the agency or presented at the hearing and the adopted rules may not be substantially different than these proposed rules. If the proposed rules affect you in any way, you are encouraged to participate in the rulemaking process.

Cancellation of Hearing. The hearing scheduled for October 5, 2000, will be canceled if the agency does not receive requests from 25 or more persons that a hearing be held on the proposed rules. If you request a public hearing, the agency will notify you before the scheduled hearing whether or not the hearing will be held. You may also call the agency contact person after September 20, 2000, to find out whether the hearing will be held.

Notice of Hearing. If 25 or more persons submit written requests for a public hearing on the proposed rules, a hearing will be held following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The hearing will be held on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. The Administrative Law Judge assigned to conduct the hearing is Allan W. Klein, Office of Administrative Hearings, 100 Washington Square, Suite 1700, 100 Washington Avenue South, MINNEAPOLIS, MN 55401-2138, 612-341-7609 (voice), 612-349-2665 (fax).

Hearing Procedure. If a hearing is held, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the close of the hearing record. All evidence presented should relate to the proposed rules. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record during the five working days following the public hearing. This five-day comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing. Following the comment period, there is a

five-working-day response period during which the agency and any interested person may respond in writing to any new information submitted. No additional evidence may be submitted during the five-day response period. All comments and responses submitted to the Administrative Law Judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the due date. All comments or responses received will be available for review at the Office of Administrative Hearings. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. Questions about procedure may be directed to the Administrative Law Judge.

Any person submitting written views or data to the Administrative Law Judge before the hearing, or during the comment or response periods, will also please submit a copy to the agency contact person at the address stated above. Please include a reference to **Public Utilities Commission Docket No. P-999/R-98-1081** at the beginning of the documents.

Statement of Need and Reasonableness. A statement of need and reasonableness is now available from the agency contact person. This statement contains a summary of the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost. You may review the statement, or obtain copies at the cost of reproduction from either the agency or the Office of Administrative Hearings.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the Campaign Finance and Public Disclosure Board. Questions regarding this requirement may be directed to the Campaign Finance and Public Disclosure Board, Centennial Building, First Floor South, 658 Cedar Street, ST. PAUL MN 55155, (651) 296-5148, (800) 657-3889.

Adoption Procedure if No Hearing. If no hearing is required, the agency may adopt the rules after the end of the comment period. The rules and supporting documents will then be submitted to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the rules are submitted to the office. If you want to be notified, or want to receive a copy of the adopted rules, or want to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

Adoption Procedure After the Hearing. If a hearing is held, after the close of the hearing record the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date when the judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date on which the agency adopts the rules and files it with the Secretary of State; you can make this request at the hearing or in writing to the agency contact person stated above.

Order. I direct that the rulemaking hearing be held at the date, time, and location listed above.

Dated:_____ _____

Burl Haar,
Executive Secretary